

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF REVENUE

In the Matter of the Revocation of the
Sales and Use Tax Permit of:

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

Gerlach Communications Holding
Group, Inc.

The above-entitled matter came on for hearing before Administrative Law Judge Allan Klein, appearing for Administrative Law Judge Kathleen D. Sheehy, on April 28, 2005, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Wayne L. Sather, Attorney, Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220, appeared on behalf of the Department of Revenue (Department). There was no appearance by or on behalf of the Respondent, Gerlach Communications Holding Group, Inc., 3002 Fiechtner Drive, Suite I, Fargo, ND 58103. The OAH record closed on May 13, 2005.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Department of Revenue, 600 North Robert Street, St. Paul, MN 55146, (651) 296-3403, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issue presented in this case is whether the Respondent has failed to pay sales and use taxes owed to the Department as required by law, thereby authorizing the revocation of the Respondent's sales and use tax permit.

The Administrative Law Judge concludes that the Respondent has failed to pay sales and use taxes owed and that its sales and use tax permit should be revoked.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 28, 2005, the Department sent a Notice of Intent to Revoke Sales and Use Tax Permit to the Respondent, advising Respondent that its sales and use tax permit would be revoked for failure to file a sales and use tax return for December 2004 and for failure to pay Minnesota sales and use taxes, which at that time amounted to \$8,658.50.^[1]

2. The Respondent filed a sales and use tax return for December 2004, but failed to remit any taxes owed.^[2]

3. On February 26, 2005, the Respondent requested a hearing.^[3]

4. The Department issued the Notice and Order for Hearing in this matter on March 18, 2005. The Notice and Order for Hearing was served on Gerlach Communications Holding Group, Inc., 3002 Fiechtner Drive, Suite I, Fargo, North Dakota 58103, by first class and certified mail on March 18, 2005.^[4]

5. The Notice and Order for Hearing contained the following passage: "The Respondent's **failure to appear at the hearing may result in a finding that the Respondent is in default**, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld."^[5]

6. The hearing was to take place at 9:30 a.m. on April 28, 2005, at the Office of Administrative Hearings.^[6]

7. At approximately 9:00 a.m. on April 18, 2005, the Administrative Law Judge received a message from Al Gerlach, telephone no. (701) 281-2595, stating that he had forgotten about the hearing and would like to reschedule it. When the hearing commenced shortly thereafter, the Department put its evidence into the record with the understanding that the Administrative Law Judge would later decide to what extent Mr. Gerlach would be permitted to participate.

8. On May 4, 2005, the Administrative Law Judge wrote to the Respondent notifying it that forgetting about the hearing did not constitute good cause for a continuance pursuant to Minn. R. 1400.7500. Nonetheless, the Administrative Law Judge forwarded to the Respondent a copy of the tape of the hearing and copies of the exhibits received in evidence during the hearing, and allowed Respondent the

opportunity to respond by offering his own exhibits or an affidavit into the record, as long as the Administrative Law Judge received the evidence by May 13, 2005. The letter informed Respondent that if the Administrative Law Judge had not received anything by May 13, 2005, the record would close at that time.^[7]

9. The Respondent failed to submit any evidence in response to this letter, and the record closed on May 13, 2005.

10. The Respondent is in default, and the allegations contained in the Notice and Order for Hearing are deemed to be true.

11. The Respondent presently holds Sales and Use Tax Permit number 4684079.

12. Those who make taxable sales are by law required to collect and remit sales tax to the State of Minnesota.

13. As of April 28, 2005, the Respondent owed the total amount of \$9,294.55 for sales tax, penalty, and interest, with penalty and interest continuing to accrue as appropriate.^[8]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have authority to consider the issues set out in the Notice and Order for Hearing and to take the action proposed under Minn. Stat. §§ 289A.20, 297A.86 and 14.50.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all procedural requirements of law and rule.

3. The Respondent is in default under Minn. Rules part 1400.6000 as a result of its failure to appear at the hearing.

4. Under Minn. Rules part 1400.6000, the allegations and the issues set out in the Notice and Order for Hearing may be taken as true or deemed proved without further evidence when a party defaults.

5. The Respondent has failed to pay sales and use taxes as required by Minn. Stat. §§ 289A.20 and 297A.77.

6. The Department gave the Respondent the 30-day notice of intent to revoke, as required by Minn. Stat. § 297A.86, subd. 1.

7. As a result of the Respondent's failure to pay sales taxes, penalties, and interest, reasonable cause exists to revoke the Respondent's sales and use tax permit under Minn. Stat. § 297A.86.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue revoke sales and use tax permit number 4684079 issued to Gerlach Communications Holding Group, Inc.

Dated: May 26, 2005

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape recorded (one tape).

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

^[1] Ex. 1.

^[2] Testimony of James Manson.

^[3] Ex. 2.

^[4] Affidavit of Mailing to Last Known Address of Joyce Kett, attached to Notice and Order for Hearing.

^[5] Notice and Order for Hearing, Additional Notice ¶ 1 (emphasis in original).

^[6] Notice and Order for Hearing.

^[7] Letter dated May 4, 2005 from Kathleen D. Sheehy to Wayne Sather, Esq., and Al Gerlach, Gerlach Communications Holding Group, Inc.

^[8] Ex. 3.